IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

Crl.MC.No. 861 of 2005-C

CRRP.59/1988 of SESSIONS COURT, THALASSERY
(C.C.NO. 144/98 OF THE JUDL.IST CLASS MAGISTRATE, TLIPARAMBA

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PETITIONER: 2ND RESPONDENT/ACCUSED:

K.P.PAUL,
KOTTAKAPALLY, THENJIPPALAM, MALAPPURAM DIST.

BY ADV. SRI.K.T.SHYAMKUMAR
SRI.HARISH R. MENON

RESPONDENTS: PETITIONER/COMPLAINANT/STATE:

1. PANACHIKKAL ROSAMMA, W/O. SEBASTIAN,
KARKA, KUTTIYERI AMSOM, MANICHERY DESOM,
TALIPARAMBA.

2. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.B.PREMNATH (E)
R2 BY PUBLIC PROSECUTOR MR. THOMAS JOHN AMBOOKEN

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.861 of 2005

DATED THIS THE 17TH DAY OF JANUARY 2007

ORDER

The petitioner, who is the accused in C.C.No.144/1998 (C.P.No.88/2004) in the file of the Judicial First Class Magistrate Court, Taliparamba, has sought for setting aside the proceedings initiated against him on the second time on the basis of the order of the revisional court; for the offence under Section 511 of Section 376 of the Indian Penal Code. The police had registered a crime in consequence to the complaint forwarded under Section 156(3) Cr.P.C. On the police filing a refer report, the respondent filed a private complaint which was taken cognizance of by the court for the offences under Sections 354 and 451 I.P.C. After appearance of the accused the matter was compounded before the court. It appears, in the meantime the complainant had taken out the matter in revision and the revisional court found that the court below is bound to take cognizance of the offence under Sections 511 of 376 I.P.C. As per the order of the revisional court, the J.F.C.M.again initiated proceedings against the accused/petitioner for the offence under

Section 511 of Section 376 I.P.C. Counsel for the petitioner has relied on Section 300 Cr.P.C. and the decision of the Full Bench of the Madras High Court in **Emperor v. John McIver, A.I.R.1936 Madras 353** to impeach the action of the J.F.C.M. The contention is the cognizance on the same facts ended in acquittal as the matter was compounded and hence as per Section 300 Cr.P.C, the petitioner is not liable to be tried again on the same facts for any other offence and that Section 300 is clearly attracted to the facts of the instant case. The petitioner has also produced the copies of the earlier proceedings, i.e., the joint petition filed by the complainant as well as the accused seeking to compound the matter and the statement of the complainant that the matter has been settled. In the circumstances, I find that continuing the proceedings again is hit by Section 300 Cr.P.C. Hence, the proceedings in C.P.No.88/2004 (C.C.No.144/1998) in the file of the Judicial First Class Magistrate Court-I, Taliparamba is herewith quashed. The Crl.M.C.is allowed.

ks. **K.R.UDAYABHANU, JUDGE**

ks.